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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,709	12/22/2004	Oliver Clemens Robert Kratzer	21854-00050-US	4837

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CONNOLLY BOVE LODGE & HUTZ LLP
1875 EYE STREET, N.W.
SUITE 1100
WASHINGTON, DC 20036

EXAMINER

MAHONE, KRISTIE ANNETTE

ART UNIT	PAPER NUMBER
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3751

MAIL DATE	DELIVERY MODE
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08/02/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/518,709

Applicant(s)

KRATZER, OLIVER CLEMENS
ROBERT

Examiner

Kristie A. Mahone

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 1-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 February 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The abstract of the disclosure, received February 19, 2007, is objected to because there are numerous typographical errors. For example, in line 2 there is an extraneous "5". Also, line 3 should read: --pouring spout **(5a)** --. Line 6 should read: --pouring spout **(5a)**, and a camming **surface (28)**--. Appropriate revision is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 31-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 31, there is insufficient antecedent basis for the recitation "...sealing flange *that abuts and sealingly engages the internal edge of the can rim* ..." since there is no prior positive recitation of a can in the claim. Applicant is advised that amending the claim to read: --sealing flange *adapted to abut and sealingly engage with an internal edge of a can rim*-- would cure this defect.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3751

5. Claims 22-26 and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pool (4,240,568) in view of Kensey (5,234,133).

Regarding claims 22 and 30, Pool shows (as in Figures 2 and 7) a container and lid combination including a container (65), a closure element (20) with an internal flange (35) that abuts and sealingly engages with the internal edge of the rim of the container (see Fig. 7). There is a pivotable lid (21) attached to the closure element (20) which has a dependent internal flange (44) adapted to sealingly engage with an internal edge (28) of the closure element.

Pool lacks a handle integrally molded with the closure element, as claimed. Kensey, however, shows such an integrally molded handle (42) to aid in the decanting of liquid from the container (Fig. 3). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided an integrally molded handle on the closure element of Pool to aid in dispensing of liquid from the container in view of the teachings of Kensey.

Regarding claims 23-24, note that the dependent internal flange (44) sealingly engages with the internal edge (28) of the closure element by wiping and extending past an internal sealing strip (29) on the flange of the closure element (Pool, Fig. 2,7). The dependent flange is shaped to allow drainage back into the container when applied to the closure.

Regarding claims 25-26, the closure element also contains a pouring spout (30), which guides the flow of liquid from the container, and a peripheral bead (40) along the outer surface of the flange to seat below the container rim.

Regarding claims 28-29, note that the upstanding wall of the container (65) includes an outwardly facing circumferential corrugation (69) located below the rim. The amount that the corrugation extends outwardly relative to the lid is a simple matter of design choice dependent upon the size of the container, and as such fails to patentably distinguish.

Regarding claims 31-34, refer to the discussion of claims 22-25, above. With respect to claim 31, further note that the closure element includes an annular ring (29). The internal flange (35), which depends from the annular ring, facilitates sealing between the closure element and a can, and thus constitutes "can rim sealing flange" in full response to the claim (see Fig. 7). Also, with respect to claim 34, it is noted that the pouring spout (30) extends from the annular ring (see Fig. 1).

6. Claims 27 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pool in view of Kensey, and further in view of Giarrante (5,893,489).

Pool and Kensey, as combined, show a container-lid combination including a closure element with a pivoting lid, but fail to disclose a camming surface associated with the hinge. Giarrante, however, shows a similar container-lid combination wherein the lid hinge (25) is associated with a camming surface (24) to hold the lid in a preferred position (Figs 1-2.). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided the lid arrangement of the apparatus as combined with a pivoted lid incorporating a camming surface as shown by Giarrante to enable selective positioning of the lid relative to the closure element.

Response to Amendment

7. The amendment, filed February 19, 2007, is sufficient to overcome the objections and rejections raised in the previous Office Action (mailed 9/5/2006). However, the amendment to the pending claims is insufficient to overcome the prior art of record, and the objections and rejections discussed above.

Response to Argument

8. Applicant's arguments, filed February 19, 2007, have been fully considered but they are not persuasive. In response to Applicant's argument that the Kensey reference fails show a handle attached to a closure element, attention is directed to Figure 3, which shows a closure element (24) with an integral handle element (42).

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristie Mahone whose telephone number is 571-272-3680. The examiner can normally be reached on Monday-Friday (9:30 A.M to 6:00 P.M.). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Kristie A. Mahone
Examiner, Art Unit 3751



GREGORY HUSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700